

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KELLY FROESE,

Petitioner,

Case No. 1:02-cv-377

v.

Hon. Wendell A. Miles

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. The court has dismissed petitioner's habeas action with prejudice and petitioner has filed a notice of appeal. Petitioner has filed a notice of appeal (docket 41). This matter is now before the court to determine the issuance of a certificate of appealability.

Under the amended provisions of the Habeas Corpus Act, a petitioner may not appeal in a habeas case unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1). Amended Rule 22 of the Federal Rules of Appellate Procedure extends to district judges the authority to issue a certificate of appealability. FED. R. APP. P. 22(b). *See Lyons v. Ohio Adult Parole Auth.*, 105 F.3d 1063, 1073 (6th Cir.1997). Under 28 U.S.C. § 2253(c)(2), the court must determine whether a certificate of appealability should be granted. A certificate should issue if petitioner has demonstrated a "substantial showing of a denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2).

The court addressed the merits of petitioner's claims. To warrant a grant of the certificate after considering these constitutional claims on the merits, "petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Applying this standard, the court finds no basis for issuance of a certificate of appealability. Petitioner has not pointed to any flaw in the court's reasoning or any issue of fact or law overlooked in the adjudication of his petition. For the reasons expressed in the court's order adopting the magistrate judge's report and recommendation, the court finds that reasonable jurists could not find that this court's dismissal of petitioner's claim was debatable or wrong.

Accordingly, petitioner's application for a certificate of appealability is **DENIED**.

IT IS SO ORDERED.

Dated: February 9, 2006

/s/ Wendell A. Miles
Wendell A. Miles
Senior U.S. District Judge